

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION**

### **CONSENT ORDER**

#### **ISSUED TO**

#### **CULPEPER WOOD PRESERVERS**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code ' 10.1-1182 *et seq.* and ' ' 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and Culpeper Wood Preservers for the purpose of resolving certain alleged violations of the Virginia Hazardous Waste Management Act and the Virginia Hazardous Waste Management Regulations.

#### **SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “VHWMR” means Virginia Hazardous Waste Management Regulations.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia and described in Code ' ' 10.1-1401 and 10.1-1184.
3. “Regulations” mean the Virginia Hazardous Waste Management Regulations are set forth at 9 VAC 20-60-12 *et seq.* The Regulations at 9 VAC 20-60-124, 260-266, -268, -270, -273 and –279 adopt by reference certain provisions of Title 40 of the Code of Federal Regulations (“CFR”). Citations made herein will be to the relevant section of the CFR which are incorporated by reference into the Regulations.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the

Commonwealth of Virginia as described in ' 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality.
6. "Order" means this document, also known as a Consent Order.
7. "CWP" means Culpeper Wood Preservers
8. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.

### **SECTION C: Finding of Facts and Conclusions of Law**

1. Culpeper Wood Preservers (CWP), located in Culpeper County, Virginia pressure treats wood with a chromium, copper and arsenic mixture for the lumber industry.
2. On March 22, 2002, DEQ NVRO conducted a site inspection of CWP for compliance with the VHWMR.
3. At the time of the inspection, CWP provided copies of the most recent P.E. certification for drip pads 2 and 3 dated March 19, 2002. The certifications indicated that drip pads 2 and 3 met all requirements of 40 CFR 265.443 for existing drip pads; however, the inspection indicated that drip pad 3 did not have a berm around the entire pad and that there were cracks throughout drip pads 2 and 3.
4. In addition, an inspection of CWP records revealed that CWP was not conducting after storm inspections as required by 40 CFR 265.444(b).
5. On April 2, 2002, DEQ issued CWP a Notice of Violation (NOV) for the following alleged violations:
  - (1) 40 CFR 265.441(a) for failure to provide a P.E. certification that meets the requirements of 40 CFR 265.443 for existing drip pad design and operating requirements
  - (2) 40 CFR 265.443(a) for failure to comply with drip pad design and operating requirements for installation of a berm around the entire perimeter of the drip pad
  - (3) 40 CFR ' ' 265.444(b) for failure to comply with drip pad inspection requirements for storm events

6. DEQ NVRO noted in the NOV referral that items 1 and 2 above are recurring violations of the same requirement previously cited for drip pad 2 and noted in a Warning Letter (WL) issued to CWP on March 21, 2001, for an inspection conducted on January 26, 2001. In addition, DEQ requested in the March 21, 2001 inspection  
  
report that CWP correct item 3 above as well.
7. On May 1, 2001, DEQ determined that CWP had returned to compliance for the following violations identified in the March 21, 2001 WL: 40 CFR 265.443(k), ceasing drippage, 40 CFR 262.11, hazardous waste determination, and 40 CFR 265.445(c)(1), closure/postclosure plan. Two remaining alleged violations identified in the March 21, 2001 WL: (1) assessment of the existing drip pad integrity and (2) installation of a berm around the entire drip pad 2, were not returned to compliance, however, until April 1, 2002.
8. On May 10, 2002, DEQ received a letter from CWP providing information on the April 2, 2002 NOV alleged violations. CWP stated that the berm for drip pad 3 was installed. In addition, CWP provided a copy of the P.E. recertification re-inspection of drip pad 3 in accordance with 40 CFR 265.443 and a copy of the revised inspection form, which included the storm event inspections.
9. On May 29, 2002, DEQ NVRO met with CWP and discussed the actions taken to resolve the noncompliance. According to a review of CWP records, the inspection logs indicated that CWP performed after storm inspections, however, the inspections were performed up to two days following a storm event. In addition, CWP completed the installation of the berm around drip pad 3 and obtained a new P.E. certification.
10. On October 18, 2002, DEQ met with CWP. CWP disagreed with the alleged violations in Section C.5(1) and (2) above, and cited in the NOV issued on April 2, 2002.
11. Appendix A of this Order requires that CWP, develop, submit for review, and implement upon approval, an internal inspection plan procedure for weekly and after storm event inspections.
12. On October 22, 2002, CWP submitted to DEQ for review and approval, an internal inspection plan procedure for weekly and after storm event inspections.

#### **SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority of Code ' ' 10.1-1182 *et seq.* and ' ' 10.1-1402, 10.1-1405, and 10.1-1455, orders CWP, and CWP agrees to comply with the terms of Appendix A of this Order. In addition, the Board orders CWP, and CWP voluntarily agree to pay a civil charge of \$2,100.00 within 30 days of the effective date of this Order in settlement of the

alleged violations cited in this Order. Payment shall be made by check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, VA 23240

Either on a transmittal letter or as a notation on the check, CWP shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for CWP.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of CWP, for good cause shown by CWP, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to CWP by DEQ on April 2, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, CWP admits the jurisdictional allegations but does not admit the factual findings, and conclusions of law contained herein.
4. CWP consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. CWP declare they have received fair and due process under the Administrative Process Act, Code ' ' 9-6.14:11 *et seq.*, and the Virginia Waste Management Act, Code ' 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any

action taken by the Board or the Director to enforce this Order.

6. Failure by CWP to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CWP shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CWP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CWP shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CWP. Notwithstanding the foregoing, CWP agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to CWP. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CWP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Culpeper Wood Preservers voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Culpeper Wood Preservers voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of

\_\_\_\_\_, 2002, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Culpeper Wood Preservers.  
(title)

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_.

**APPENDIX A**  
**SCHEDULE OF COMPLIANCE**

Culpeper Wood Preservers shall:

1. By October 28, 2002, develop and submit to DEQ for review, a written inspection plan procedure for the weekly and after storm event inspections to ensure the integrity of the drip pads prior to the drip pads going back into operation after a storm event. CWP shall implement this plan upon approval by DEQ.